

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Michael Marshawn Lee Dalton,

Defendant.

**ORDER ON REPORT  
AND RECOMMENDATION**  
Criminal No. 23-278 ADM/DJF

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Harry M. Jacobs, Assistant United States Attorney, United States Attorney's Office,  
Minneapolis, MN, on behalf of Plaintiff.

Thomas H. Shiah, Esq., Law Offices of Thomas H. Shiah, Ltd., Minneapolis, MN, on behalf of  
Defendant.

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This matter is before the undersigned United States District Judge for a ruling on Defendant Michael Marshawn Lee Dalton's ("Dalton") Objection [Docket No. 30] to Magistrate Judge Dulce J. Foster's November 6, 2023 Report and Recommendation [Docket No. 29] ("R&R"). In the R&R, Judge Foster recommends denying Dalton's Motion to Dismiss the Indictment [Docket No. 25].

Dalton objects to the R&R for purposes of preserving the issue of whether the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1), is unconstitutional on its face and as applied to him. Obj. at 1. Dalton acknowledges that binding Eighth Circuit precedent requires the Court to deny the Motion to Dismiss. Id. at 1-2. Specifically, the Eighth Circuit has held that § 922(g)(1) is constitutional and does not require "felony-by-felony litigation." United States v. Jackson, 69 F.4th 495, 502 (8th Cir.), reh'g and reh'g en banc denied, 2023 WL 5605618 (8th Cir. Aug. 30, 2023); see also United States v. Cunningham, 70 F.4th 502, 506 (8th Cir. 2023)

(“[T]here is no need for felony-by-felony determinations regarding the constitutionality of § 922(g)(1) as applied to a particular defendant.”).

In reviewing a magistrate judge’s report and recommendation, the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C); see also D. Minn. L.R. 72.2(b). A district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

After a de novo review, the Court agrees with the R&R’s conclusion that the Motion to Dismiss the Indictment must be denied pursuant to controlling Eighth Circuit precedent.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant Michael Marshawn Lee Dalton’s Objection [Docket No. 30] to Magistrate Judge Dulce J. Foster’s November 6, 2023 Report and Recommendation is **OVERRULED**;
2. The Report and Recommendation [Docket No. 29] is **ADOPTED**; and
3. Dalton’s Motion to Dismiss the Indictment [Docket No. 25] is **DENIED**.

BY THE COURT:

Dated: December 27, 2023

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE